

In re Appln. Of: Chris Henri
Application No.: 10/580,527

REMARKS

The Office Action dated January 23, 2009 has been carefully considered. As a preliminary matter, Applicant attempted to set up an interview with the Examiner due to the "Finality" indication. In a telephone call with the Examiner on April 27, 2009, the Examiner explained that the "FINAL" indication on the Office Action is in error as it shows in USPTO records that it is actually non-FINAL. As a result, it is understood that the present Office Action is not FINAL, or that finality should be removed. The Examiner suggested that Applicant present its amendment that would be considered and if questions arose that an interview could occur at that point.

In the last Office Action, certain claims in the application are allowed (claim 5) or allowable (claim 17). To hopefully put the application in condition for allowance, Applicant has amended claims each of the independent 1, 14, and 19 as in the attachment. Additionally, the proposal attempts to hone in on a key distinction, which is believed to have lead to allowability of other claims such as claim 17, but without being limited necessarily to such narrow scope. Accordingly, Claims 1-3; 13-14; 16-17; 19, 21-22 are amended; and new claims 24-25 are presented. Applicant respectfully requests reconsideration in view of the foregoing amendments and the following remarks.

Relative to the novelty rejection of Claim 1 on Borsdorf, Claim 1 incorporates claim 9 (that was not rejected on Borsdorf), and that thereby eliminates the novelty rejection based on Borsdorf. According the novelty rejections on Borsdorf are moot.

Relative to the remainder of the Office Action, it is seen there are superficial rejections based on McCarty. Importantly, it is noted that the Examiner has cited Col. 4, line 16 of McCarty – which notably requires the first 14 inches to be either a constant diameter (ie. no taper) or a constant taper (not non-linear as recited in the claims). Thus, it is respectfully submitted the Examiner appears to be factually mistaken in the Office Action as the Examiner stated "the non-linear tapered section extends until about 14 inches from the tip end". In reality, the non-linear section only starts at 14 inches from the tip end, as the first 14 inches are "constant" in diameter or taper. The examiner himself acknowledges this when he states on page 3 that: "McCarty does not disclose the exact rearward extent of the non-linear tapering starting at point 28." Thus, it would not appear finality of the Office Action would be appropriate anyhow due to a factual error. If Applicant is not understanding the reasoning of the Examiner, then Applicant requests clarification to see if appeal is appropriate.

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Otherwise, the remaining prior art rejections cannot be based on a factual error, and as such the prior art rejections must be withdrawn.

Nevertheless, to avoid any such superficial rejection (and noting that claim 17 refers to several inches within the first fourteen inches), Applicant has proposed adding the following to the independent claims to gain allowance:

"wherein the non-linear tapered section comprises a continuously increasing diameter extending over several inches within the first 14 inches from a terminating point of the tip end."

It is noted that the term "terminating point" has been introduced. The "tip end" has been and is used in a generic sense; and specifically has been broadly used to refer to a front portion of the cue (e.g. such as the front half of the cue; indeed, the Examiner has attempted to broadly apply it at least this broad). As such, for clarity, the dependent claims have been amended as such to more clearly and specifically specify a "terminating point". It is therefore noted that the non-linear tapered section may or may not start at the terminating point as the independent claims are generic either way (e.g. the "non-linear tapered section" could start at or in spaced relation behind the "terminating point").

Therefore, for the forgoing reasons, all of the prior art rejections are respectfully requested to be withdrawn.

Claims 24-25 have been suggested as further alternatives for patent coverage.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Extension of Time and Fee Deficiency

Applicants believe that a one month extension of time is required. However, this conditional petition is being made to provide for the possibility that Applicants have inadvertently overlooked the need for a petition and fee for extension of time. If any

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additional fee is required, or any overpayment is made, in connection with this communication please charge or credit deposit account No. 50-3505.

Respectfully submitted,

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Date: May 5, 2009